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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952

**No. 226**

J. LAURITZEN,

Petitioner,

*against*

EVALD JOHANN LARSEN,

Plaintiff-Respondent.

**STATEMENT OF JACOB RASSNER, ATTORNEY FOR THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH, ANSWERING OBJECTION OF THE PETITIONER, J. LAURITZEN, TO PLAINTIFF-RESPONDENT'S PETITION TO FILE A BRIEF AS *AMICUS CURIAE* ON BEHALF OF THE DANISH SAILORS' AND FIREMEN'S UNION, NEW YORK BRANCH**

JACOB RASSNER,
Counsel for
Danish Sailors' and Firemen's Union,
New York Branch.

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TO THE HONORABLE, THE CHIEF JUSTICE OF THE UNITED STATES AND THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

I am a member of the bar of the State of New York and of the bar of this Court. I have been general counsel for the Danish Sailors' and Firemen's Union, New York

* List of Petitioning Seamen, Addenda Exhibit E.

Branch, for approximately five years, during which time I have handled claims for wages, maintenance and cure and personal injuries for members of said union, some of which cases are still pending in Court, many of which have been settled amicably with agents of owners of underwriters.

When the case of *Taylor* v. *Atlantic Maritime** was decided in the United States Court of Appeals and application for writ of certiorari was made by the Atlantic Maritime Company to this Court, I filed a brief *amicus curiae* on behalf of the said union (Oct. Term, 1950, No. 607) opposing the granting of said writ.

Mr. Fred B. Clausen, Agent in charge of said Branch of the Danish Sailors' and Firemen's Union, New York Branch, had authority from the officers of the Danish Sailors' Union at Copenhagen and from the Danish Firemen's Union at Copenhagen to engage counsel and file brief *amicus curiae* against the petitioning employer, Atlantic Maritime Company.

I have been associated with Silas B. Axtell in several cases and have been aware for many years of the fact that he was counsel to Andrew Furuseth, President of the International Seamen's Union of America, from about 1910 until the death of Mr. Furuseth in 1938.

I first learned of the pendency of the petition for writ of certiorari in the above matter by telephone conversation with Mr. Axtell. I ascertained that the Danish Sailors' and Firemen's Union, New York Branch, its agent and members here were desirous of participating in this case by filing a brief *amicus curiae* or doing whatever should be done in the interest of their members about two or three weeks before the case was argued on January 6. I cooperated with Mr. Herbert Lebovici, counsel for the

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* *Taylor* v. *Atlantic Maritime*, 179 Fed. (2d) 597, writ cert. den. 341 U. S. 915.

Panama Seamen's Union and through Mr. Axtell learned of the plan of Mr. Harry Graham to file brief on behalf of certain seamen.

Through Mr. George Halpern, associate counsel with Mr. Richard M. Cantor, I learned that Mr. Cantor and Mr. James M. Estabrook had entered into a stipulation that they would not consent to briefs being filed *amicus curiae* in this case.

As is indicated in the statement of Mr. James M. Estabrook, dated 29th of January 1953, in his objection to the filing of brief *amicus curiae* by the Danish Sailors' and Firemen's Union, New York Branch, an arrangement seems to have been made by the officers of the head of the Danish Sailors' Union and the Danish Firemen's Union at Copenhagen, which is inconsistent with the letter of authorization which had been issued to Mr. Clausen at the time the petition for brief *amicus curiae* was made in the *Taylor* v. *Atlantic Maritime* case, Spring of 1951 (*supra*).

Annexed hereto is a letter* which I wrote to Mr. James M. Estabrook, counsel for the petitioner, J. Lauritzen. It is unusual that counsel for the petitioner, representing employer and underwriter, should be the first to apprise the authorized agent of both unions at the New York Branch that he should not file a petition for leave to file a brief *amicus curiae* on behalf of the New York Branch and the seamen members of it.

I make this statement of fact that the petition and brief filed in the name of Silas B. Axtell, as counsel for the Danish Sailors' and Firemen's Union, Myron Scott of Counsel, was prepared, printed, served and filed under my instruction.

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* Exhibit C. (Exhibits A and B are attached to Mr. Axtell's brief.)

I state also that petitions have been signed by a large number of Danish and other seamen employed on Danish and other foreign ships which are engaged in carrying more than half the foreign trade of the United States, a great deal of which is loaded or discharged in New York.

In addition to what has been said by Mr. Axtell and Mr. Scott I would direct this Court's attention to the fact that Mr. George Sutherland, then ex-Senator from Utah (later a member of this Court), briefed and argued the case of *Dillon* v. *Strathearn** in December, 1918.

Later the same jurist was a member of this Court when the constitutionality of the Jones Act itself was established by the decision of this Court in *Panama* v. *Johnson.*** Of course Mr. Justice Sutherland, having helped draft the Jones Act and having argued the constitutionality of the Seamen's Act itself, in the *Strathearn* case, (*supra*), did not sit as a member of the Court when the *Panama* v. *Johnson* case (*supra*), was argued and decided. In fact the case was argued by Mr. Wade Ellis, former Solicitor General of the United States, his former partner.

Reference to page 45 of *Merchant Seamen's Law* (Axtell, Darwin Press, 1945) indicates that Mr. Sutherland was legal adviser to the Union, to Mr. Axtell, its counsel, and to Senator Wesley M. Jones, chairman of the Committee on Commerce of the United States Senate, who was not a lawyer, in drafting and securing the passage of the Jones Act, amendment to Section 20, which had been found ineffective by this Court in the *Chelentis* v. *Luckenbach**** case.

"In this view the statute leaves the injured seaman free under the general law—Sec. 24 (par. 3) and 236

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* *Dillon* v. *Strathearn*, 252 U. S. 348.

** *Panama* v. *Johnson*, 264 U. S. 375.

*** *Chelentis* v. *Luckenbach, S. S. Co.*, 247 U. S. 372.

(par. 3) of the Judicial Code—to assert his right of action under the new rules on the admiralty side of the court. On that side the issues will be tried by the court, but if he sues on the common-law side there will be a right of trial by jury. So construed, the statute does not encroach on the admiralty jurisdiction intended by the Constitution, but permits that jurisdiction to be invoked and exercised as it has been from the beginning. . . . The statute extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform."

Bare reference has been made by Mr. Axtell to the legislative accomplishments of the Sailors' Union. A completely disinterested description of the LaFollette Seamen's Act as it seemed to an Englishman in 1926 appears at pages 77-87 in *A Symposium on Andrew Furuseth* (Axtell, Darwin Press) quoting from a report of Charles R. Clee, formerly superintendent, Merchant Marine, Great Britain, *Desertion and Freedom of Seamen*, reprinted from International Labor Review, Vol. XIII, No. 5-6, May-June, 1926.

There are certain excerpts from Sailors' Union of the Pacific in a book now out of print, pages 94-144* the reading of which would convince any person who might be in doubt that the framers of the Seamen's Act intended it to apply to foreign ships, and as was argued by Mr. Sutherland and stated by the Court in its decision in *Panama* v. *Johnson* (*supra*).

On page 14 of Mr. Axtell's brief he describes the manner in which the phraseology of the Jones Act was designed to make it applicable to foreign ships. On pages 31-32 of *Merchant Seamen's Law* published 1945 is a de-

* By Dr. Paul S. Taylor, published 1923, Dutton & Co., out of print, reprinted in Symposium on Andrew Furuseth, pp. 92-144.

scription of how the amendment to permit seamen to carry cases to the appellate courts without prepayment of fees and costs was accomplished by Mr. Furuseth and Senator Jones:

> "Mr. Furuseth was fortunate enough to enlist the sympathy of Senator Wesley Jones of Washington who later sponsored the Jones Act and this amendment was attached as a rider to the Civil Sundries Appropriation Act of that year, so that it was on the President's desk for signature before the ink on the signature of the Chief Justice of the Supreme Court had fairly dried."

The purposes of the Friends of Andrew Furuseth Legislative Association, formed March 12, 1939, a little over a year after his death, are stated in the Constitution as:

> "To maintain the ideals and legislative policies of Andrew Furuseth for seamen to the end that operating costs of foreign vessels may approximate that of American vessels."

Mr. Einar Johansen, agent of the Norwegian Seamen's Union in New York, referred to in the petition and brief *amicus curiae*, filed by Mr. Axtell and Mr. Scott for the Danish Sailors' and Firemen's Union, New York Branch, is a director of that Friends of Furuseth Association.

Mr. Axtell has spent all his life since 1908 to date in this work.

I think I might quote from his address to The International Bar Association at London, July 1950: "Communism has not found root in our institutions or in our transport industries. Access to justice a fair and speedy trial largely due to the wide administration of justice has formed a 'cordon sanitaire' about the Western Hemisphere."

In conclusion, of course, nobody can dispute that foreign vessels that enter harbors of the United States are subject to conditions imposed by local law, and, secondly, nobody can suggest that we could possibly enforce in our courts a maritime law of limitation such as a compensation act of a foreign country, to the disadvantage of American shipowners.

There appears to be no doubt that the Jones Act was intended to apply to foreign vessels and that the courts have repeatedly so held. Foreign seamen have been shipping under that condition for many years. If any legislation is to be sought, it would be, of course, in the nature of a treaty that might take from Danish seamen the right they now enjoy and give to Danish shipowners a lower insurance rate.

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* On page 17 of the motion for leave to file a brief *amicus curiae* by the Danish Sailors' and Firemen's Union, New York Branch, by Messrs. Axtell and Scott, reference is made to the case of a dispossessed Polish seaman (potential public charge), Sigmunt K. Zowistowsky. Word has just been received from the Consul of Honduras that the limit of liability for any injury under the Honduras law is $5,000. This man is suffering from a broken spine and is permanently disabled. The owner and employer is a Honduras corporation which charters its vessels to the United Fruit Company. Articles were signed in U. S. A. *Gerradin*, 51 F. (2) 417, 287 U. S. 642.

Respectfully submitted,

JACOB RASSNER,
Counsel for
Danish Sailors' and Firemen's Union,
New York Branch.

## Exhibit C.

February 2, 1953

Haight, Deming, Gardner, Poor & Havens, Esqs.
80 Broad Street
New York, New York

Attention: James Estabrook, Esq.

Dear Sir:

I have been retained by Mr. Fred B. Clausen of 156 Montague Street, Brooklyn, New York, to investigate the circumstances under which the contents of a certain letter dated January 27, 1953, address to him by Richard Jensen and Th. Laursen came to your knowledge.

Mr. Clausen feels that the publication of said letter by having the same printed as an appendix in a matter pending before the United States Supreme Court constitutes an invasion of his personal rights.

Before taking any further steps in this matter, I would appreciate having your version.

Very truly yours,

JACOB RASSNER

JR:DF
CC to:

David P. H. Watson, Esq.
Haight, Deming, Gardner, Poor & Havens, Esqs.
80 Broad Street
New York, New York

Mr. Fred B. Clausen
156 Montague Street
Brooklyn, New York

## Exhibit D.

*Address*

C/o Scandinavian Seamen's Union, 156 Montague St., Brooklyn 2, N. Y.

Rasmus K. Jensen, A.B.
Ole Larsen, A.B.
Jorge Clausen, A.B.
Magnusen, Steward
A. Petersen, A.B.
Erling Anderson, A.B.
Paul Paulsen, Oiler
Kenneth Wahl
Ahrel V. Jensen, A.B.
Ake Ryden, A.B.
Nielsen, A.B.
Leif Nielsen, O.S.
Ole Olsen, O.S.
Kjell Kossiua, A.B.
Bruno B., A.B.
Pederson, A.B.
380-345674 Chares Folsom (British) A.B.B.W.I.
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578-34040 Harterman deslas Oiler Portuguse
C280559 Al Godfrey Seaman British
2526 L. Albertos du Silvo Portuguse A.B.
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*Exhibit D.*

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*Exhibit D.*

| *Name* | *Address* |
|---|---|
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| Tialner Nidsin | " |
| Gono Hannin | " |
| Ualder Larsen | " |
| M. Forgenjm A.B. | " |
| Egan Lasner A.B. | " |
| Hil Nulain O.S. | " |
| Flemming Langger A.B. | " |
| Tnorvald Yenniw | " |
| Adoel Hansen A.B. | " |
| Mogens Trediskler | " |
| Kennelh Wahl | " |
| Anie Aedernin A.B. | " |
| Borge Prip A.B. | " |
| Y. Adrian | " |
| B. J. Blemkeassein A.B. | " |
| E. Andersin | " |
| K. Boleeir | " |
| Indreus S. Larsen O.S. | " |
| Ole V. Larsin | " |
| K. Larsin | " |
| Folmer Jackosin Oiler | " |
| Koll Anderson | " |
| U. Flansen A.B. | " |
| A. U. Pedenni A.B. | " |
| B. Hansin A.B. | " |
| L. Nannann A.B. | " |
| C. Arose A.B. | " |
| B. Nelsen A.B. | " |
| K. Klansin A.B. | " |

*Exhibit D.*

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T. Sehnedosk " 25 South St.
Trank Jrban Kross " 25 South St.
Alfreedo F. Sena " 25 South St.
George Benz O.S. 25 South St.
Pedio B. Loyd Wippy 25 South St.
Marcedine Argneller Massman 25 South St.
Luiano Cowherser W.O. 19 Pirave St., Italy.
Adalbnty Mariño Fariman Italy
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Gorge Trip O.S. 156 Montague St., Bklyn.
Jim E. Madrin O.S. "
Leo Josep A.B. "
Olaf Demsin Carpenter "
A. Jensen Oiler "
Flemming Fanger O.S. "
Egan Petesnin A.B. "
K. Bdhin A.B. "
Alide H. O. Talke A.B. "
K. Jalloes A.B. "
G. Dllevanger A.B. "
Martin Kunnel A.B. "
Kenneth C. King M.M. " Pass. P. No. 2620
Losi Bagenets Chief Mate "
Nicholas A. Bevallo Oiler "
Joe Antoin Sancfy Wiper "
San Woller A.B. "
Antorn Dr Rise Oiler "
Louis Lragal Oiler "
Joagnir Da Centa A.B. 109152 Pass. Port
Toognin M. da Silva A.B.
Ruaoef Caeda Engineer Z231959 "
Anau Ruhman Fireman "
Robert Kilgour Jr. Eng. Z62180 "
Louinal Arany Bahrla Z198404 "

*Exhibit D.*

Fronasa Wimeg Fireman
Uoldemar Pons Fireman
Emol Paenns Eng
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Zongin Nielsen A.B. British
Egan Ezni Peterson A.B.
Fleming Fangger O.S.
Bent Tho Karnson A.B.
P. J. Blankenruie A.B.
Krestean E. Nnudsen A.B.
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M. Jorgensen A.B. Danish
Andreas S. Larsen Oiler Danish
Axel V. Qinsen A.B.
Magens Jensen A.B.
Leif Neilsen O.S.
Livl Opsihl F.W.T.
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Karl Lrnant Swedish
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Ray. Packman A.B. Australian
Robert Hevere Oiler Columbia
Enrique Olerares S.A.

*Exhibit D.*

A. V. Pedersen A.B. Norwegian
Hsorbild Doestersen Oiler Danish
Walter Jensen Danish
Thor Pulusen A.B. Norwegian
Ivan Stole A.B. Norwegian
Jomo Andanson Elec. Swedish
Valder Larsen O.S. Danish
Karl T. Nielsen A.B. Danish
James Jensen A.B. Danish
E. Andersen A.B. Danish
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H. Andersen Carpenter Danish
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Vaino V. Dakkaraian A.B.
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Kenneth C. King A.B. Pass No. C2620
John Anderson Ch. Mate
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Robert Singer O.S.